



**WASHINGTON D.C.** -- {Rep. Jane Harman (D-Venice), Ranking Member on the House Permanent Select Committee on Intelligence, today sent the following letter to President Bush:

January 4, 2006

The President of the United States  
The White House  
Washington, DC 20500

Dear Mr. President:

On December 17, 2005, six members of the House Permanent Select Committee on Intelligence requested a briefing for the full Committee concerning certain publicly-reported activities of the National Security Agency. As you know, since 2003, I have been a member of the so-called Gang of Eight – which includes the Speaker and Minority Leader of the House, the Majority and Minority Leaders of the Senate and the Chairmen and Ranking Members of the congressional intelligence committees. As a member of the Gang of Eight, I have received periodic briefings on highly classified programs. However, with respect to the NSA program that you have disclosed, I have reviewed the law and now believe that the practice of briefing only certain Members of the intelligence committees violates the specific requirements of the National Security Act of 1947.

The National Security Act requires that “The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States . . . .” 50 U.S.C. § 413(a)(1). The Act makes clear that the requirement to keep the committees informed may not be evaded on the grounds that “providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information.” 50 U.S.C. § 413(e).

The Act provides for one exception to the President’s duty to keep all committee Members fully and currently informed of intelligence activities. In the context of a covert action, the President may, if he concludes that “it is essential . . . to meet extraordinary circumstances affecting vital interests of the United States,” limit notification to the Gang of Eight. 50 U.S.C. § 413b(c)(2). That procedure applies by the terms of the statute to covert actions, not intelligence collection activities.

For all intelligence activities that are not covert actions, the Executive Branch’s duty is clear: the “heads of all . . . entities involved in intelligence activities shall . . . keep the congressional intelligence committees fully and currently informed of all intelligence activities.” 50 U.S.C. § 413a(a)(1) (emphasis added).

The NSA program does not qualify as a “covert action.” That term is defined in the National Security Act as “activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent.” 50 U.S.C. § 413b(e). Covert actions, pursuant to the statute, do not include “activities the primary purpose of which is to acquire intelligence . . . .” 50 U.S.C. § 413b(e)(1).

As a general matter, Gang of Eight briefings do not provide for effective oversight. Members of the Gang of Eight cannot take notes, seek the advice of their counsel, or even discuss the issues raised with their committee colleagues. It is precisely for this reason that the law requires briefings for the full committee. As you know, both congressional intelligence committees are select committees, formed of Members who hold the highest security clearances and have a proven ability to safeguard classified information. They were formed to be a select subset of the Congress, which could provide oversight on behalf of their colleagues who do not sit on the intelligence committees.

I urge you to reconsider your position. In my view, failure to provide briefings to the full congressional intelligence committees is a continuing violation of the National Security Act.

Sincerely,

Jane Harman  
Member of Congress